

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. A-5885

PETITION OF CRAWFORD ELLERBE
(Hearing held June 4, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, July 17, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(1). The petitioner proposes to construct a one-story addition that requires variances of four (4) feet as it is within four (4) feet of the side lot line and of 10.30 feet as it reduces the sum of both side yards to 10.70 feet. The required side lot line setback is eight (8) feet and the required sum of both side yards is twenty-five (25) feet.

The subject property is Lot 30, Block 5, Foxhall Subdivision, located at 13115 Foxhall Drive, Silver Spring, Maryland, in the R-90 Zone (Tax Account No. 01391162).

Decision of the Board: Requested variances denied.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 12 x 26 foot one-story addition in the northern side yard.
2. The petitioner testified that his rear yard has a severe slope and that the topography on his lot differs from that of his adjoining and confronting neighbors. The petitioner testified that property's rear yard also has an existing tree and a patio section that prevents new construction in this area. The petitioner testified that an addition could not be built in the southern side yard because of an existing chimney.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply

with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's lot has no exceptional topographical or other conditions that are peculiar to the petitioner's property in relation to the adjoining and confronting properties.

The Board further finds that the sloping on the petitioner's lot is consistent with the sloping on the other properties in the neighborhood and that the lot's size is consistent with the minimum lot size in the R-90 Zone. See, Exhibit No. 6(c) (photograph of Lots 30 and 31) and Exhibit No. 8 (zoning vicinity map).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variances of four (4) feet from the required eight (8) foot side lot line setback and of the 10.30 feet from the required twenty-five (25) foot sum of both side yards for the construction of a one-story addition are denied.

The Board adopted the following Resolution:

Board member Donna L. Barron was necessarily absent and did not participate in this Resolution. On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 17th day of July, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.